

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

|                               |   |                |
|-------------------------------|---|----------------|
| MARK MITCHELL                 | : | CIVIL ACTION   |
|                               | : |                |
| v.                            | : |                |
|                               | : |                |
| MARTIN F. HORN, <u>et al.</u> | : | NO. 98-cv-4742 |

**M E M O R A N D U M**

Ludwig, J. September 28, 1998

Plaintiff, an inmate, has filed a pro se 42 U.S.C. § 1983 civil rights complaint against the Commissioner of the Pennsylvania Department of Corrections.<sup>1</sup> Plaintiff is alleging, in essence, that: (1) he was falsely charged with institutional misconduct; (2) he was denied due process at his misconduct hearing and in his appeal; (3) he was temporarily confined in a cell that was unfit for human habitation; and (4) emotional trauma. As relief, plaintiff seeks declaratory and injunctive relief, and money damages.

Plaintiff's claim of inhumane confinement will be dismissed without prejudice under 42 U.S.C. § 1997e. Plaintiff's other claims will be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(I).

A. False Misconduct Charge

Plaintiff's claim that he was falsely charged with institutional misconduct does not state a violation of his

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<sup>1</sup>Plaintiff has failed to comply with Rule 10 of the Federal Rules of Civil Procedure which provides that the caption of the complaint shall contain the names of all of the parties. However, it appears that plaintiff is also attempting to sue numerous members of the staff at the State Correctional Institution at Graterford in this civil action. Therefore, the claims against these persons will be dealt with herein.

constitutional rights. The filing of a false or unfounded misconduct charge against an inmate does not constitute a deprivation of a constitutional right. See Freeman v. Rideout, 808 F.2d 949 (2d Cir. 1986), cert. denied, 485 U.S. 982 (1988); Flanagan v. Shively, 783 F. Supp. 922, 931-32 (M.D. Pa.), aff'd, 980 F.2d 722 (3d Cir. 1992), cert. denied, 114 S. Ct. 95 (1993).

B. Denial of Due Process at Institutional Misconduct Hearing and Appeal

Likewise, plaintiff's claim that he was denied due process at his misconduct hearing and his appeal does not state a violation of his constitutional rights. The Supreme Court has held that prison regulations on confinement of inmates do not create a liberty interest enforceable in a § 1983 action. Sandin v. Conner, 515 U.S. 472 (1995). In Sandin, the Court determined that the added restraint of prison discipline "did not present the type of atypical, significant deprivation in which a state might conceivably create a liberty interest." Id. at 486.

Applying the Sandin test, the Court concludes that punitive confinement does not impose an "atypical and significant hardship" on the plaintiff in relation to the "ordinary incidents of prison life." Sandin, 515 U.S. at 484. Instead, the possibility that a prisoner may receive this form of treatment is the type of "hardship" ordinarily contemplated by a prison sentence. Thus, plaintiff's claim that he was denied due process at his institutional misconduct hearing and appeal fails to state a violation of his constitutional rights.

C. Conditions

The Prison Litigation Reform Act of 1995, 42 U.S.C. § 1997e(a), provides that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

The Pennsylvania Department of Corrections has established a Consolidated Inmate Grievance Review System. DC-ADM 804 (effective October 20, 1994). Plaintiff does not allege that he filed any grievances regarding the conditions of his cell. Therefore, because it appears that he has not exhausted the administrative remedies available to him, this claim will be dismissed without prejudice.

D. Emotional Injuries

Finally, plaintiff alleges that the aforementioned violations of his constitutional rights have caused him to suffer emotional trauma. An inmate may not bring a Federal civil action for mental or emotional injury without a prior showing of physical injury. See 42 U.S.C. § 1997e(e).

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Edmund V. Ludwig, J.

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CIVIL ACTION

NO. 98-cv-4742

O R D E R

AND NOW, this 28th day of September, 1998, it is ordered:

1. Leave to proceed in forma pauperis is GRANTED.
2. Plaintiff's claim of inhumane confinement is dismissed without prejudice. 42 U.S.C. § 1997e.
3. Plaintiff's remaining claims are dismissed pursuant to 28 U.S.C. § 1915 (e)(2)(B)(I).

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Edmund V. Ludwig, J.